

09/16/96



## Planning Company Associates

## MEMORANDUM

September 16, 1996

To:

Mario Stavale

McDonnell Douglas

From:

Shannon Smith

Subject:

Railroad Issues on Torrance Site

Burlington Northern/Santa Fe Railroad Easement. As I mentioned to you on Friday, David had asked me to look into the actions needed to remove the railroad usage easement on the Torrance property. I spoke with both Dale Neal of Latham & Watkins and Greg Stewart of Tait & Associates regarding this issue. Dale sent me the easement language and the letter from Chicago Title regarding its abandonment. Greg sent me the blueprints so that I might understand the placement of the tracks.

Apparently, the easement was granted in 1964 between the Department of the Navy and the Harvey Aluminum company. The purpose of the easement was to allow Harvey Aluminum to switch cars between the lines of railroads and two existing spur tracks on the plant. The easement stated that "All or any part of the easement herein granted may be terminated upon failure on the part of the grantee to comply with any of the terms and conditions of this grant; upon abandonment of the rights granted herein, or upon non-use of such rights for a period of two consecutive years."

In their letter dated May 29, 1996, Chicago Title stated that they cannot consider the easement to be legally abandoned solely upon evidence that they are not currently in use (even if the tracks are removed). They suggest that McDonnell Douglas obtain a court order of abandonment. This process requires showing proof that the tracks have not been used for 20 years. After a discussion with David, it is our understanding that regardless of Chicago Title's position, the easement is the binding legal document and its termination procedures are the ones we should follow.

To that end, I contacted the Burlington Northern/Santa Fe (BNSF) offices to understand their procedures for documenting non-use of a railroad track. While, this process is lengthy, approximately 10 weeks, it could be quicker and easier than obtaining a court order. The process begins with our writing a letter to BNSF asking for a determination. BNSF then researches the request, makes a determination whether they wish to continue having a rail service contract on the property, and responds to us.

Attached is a draft of a letter to BNSF requesting their consideration of this matter. I would like you and the team to review the letter and call or fax with any changes or corrections.

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PUC Railroad Grade Crossing Process. The team had asked David to look into the ramifications of another property owner protesting our application. According to the PUC, most protests come from either railroads or other cities if there is a border issue. Rarely do they receive a protest from an interested party, but when they do, it almost always concerns a safety issue. PUC will consider the protest if the argument is valid, such as the grade is too steep, the configuration of the crossing is not adequate for a main line, the location is not adequate, there is no need, or the crossing is too close to another crossing. PUC will also determine if the protester is directly affected by the crossing. The grade crossings that McDonnell Douglas are considering appear to only affect the their own property. I don't believe the adjacent property owner would have a valid protest, or at least one that couldn't be resolved.

cc: Allan Mackenzie
Dale Neal
Cindy Starrett